

## REMARKS

Claims 197, 199 to 200 and 202 to 214 are pending in this application. Claims 198 and 201 have been canceled. Claims 1 to 196 have been canceled in response to a Restriction Requirement. Claims 197, 203 and 208 have been amended. No new matter has been added by these claim amendments.

The amendments to claim 197 are supported throughout the specification as filed. Support for the terms “plurality” and “each” may be found, for example, at page 8, line 22, through page 9, line 10. Support for the phrase “in, on or associated with” may be found, for example, at page 14, line 24, through page 5, line 1; and page 15, line 21 through page 6, line 11; as well as in Figures 1 and 2. Support for the term “predetermined location” may be found, for example, at page 15, lines 19-20 and Figures 1B and 2B. Support for the term “discrete” may be found, for example, at page 16, line 12, through page 17, line 7; and page 32, lines 20-25, which refer to Figure 5. Support for the term “associated with magnetic material” may be found, for example, at page 9, line 16, through page 10, line 7; and at page 12, line 8, through page 13, line 24. Support for the phrase “at the time that the cells are immobilized” may be found, for example, at page 15, line 24, through page 16, line 11.

The amendments to claim 203 are supported throughout the specification as filed. Support for the term “matching periodicity” may be found, for example, at page 32, lines 20-25; page 17, lines 12-24; and page 31, line 18, through page 32, line 9, which refers to Figure 5. Support for the term “plurality” may be found, for example, at page 8, line 22, through page 9, line 10. Support for the phrase “immobilized in one of said plurality of magnetic receptacles” may be found, for example, at page 31, line 18, through page 32, line 7. Support for the term “other of said plurality” may be found, for example, at page 31, line 23, through page 32, line 5.

The amendments to claim 208 are supported throughout the specification as filed. Support for the term “plurality” may be found, for example, at page 8, line 22, through page 9, line 10. Support for the term “mated” may be found, for example, at page 7, lines 10-11; and page 7, line 17, through page 8, line 5. Support for the phrases “capable of being transferred” and “such that a substantial number of said cells is transferred” may be found, for example, at page 31, lines 1-13.

### **Advisory Action Asserts Indefiniteness of Claims Amended**

The Advisory Action expressed concern over the definiteness of the un-entered claim amendments filed January 15, 2006. Applicants have amended the claims herein in response to

the concerns expressed in the Advisory Action and respectfully submit the claim amendments place the claims in condition for allowance. The amendments to the claims made herein do not effect Applicants' comments in the Amendment after final Office Action filed January 13, 2006 overcoming the obviousness rejection.

The Advisory Action asserts that claim 197 as amended in the paper filed January 13, 2006 is indefinite because the meaning of "discrete" location is uncertain, and it is unclear how a discrete location differs from other locations. Applicants have amended the claim to clarify that a plurality of individual magnetic receptacles are in predetermined locations wherein the locations of the receptacles are discrete from one another. The clarifying amendment comports with use of the term "discrete" throughout the specification and in particular in the paragraph beginning at page 16, line 13. The clarifying amendment also comports with the definition of "discrete" in The Merriam Webster Dictionary (1998): "individually distinct[;] noncontinuous." (Relevant pages filed herewith).

The Advisory Action also asserts that claim 197 is indefinite because it is unclear "where the claimed device contains the discrete and predetermined location immobilizing the one to about five cells, and when the cells are associated with the magnetic beads." Applicants have amended the claim to clarify that the claimed device contains the discrete and predetermined location immobilizing the one to about five cells "in, on or associated with" the substrate of the claims. Applicants have further amended the claim to clarify that the cells are associated with magnetic material "at the time" the cells are immobilized in the magnetic receptacles.

The Advisory Action asserts that claim 203 as amended in the paper filed January 13, 2006 is indefinite because the term "shares periodicity" is uncertain. Applicants have removed the term "shares periodicity" and replaced it with the term "comprises matching periodicity," which is fully described throughout the specification and in particular, for example, at page 31, line 18, through page 32, line 9, referring to Figure 5.

The Advisory Action also asserts that claim 203 is indefinite because the specification does not disclose "located within" as an alternative to "mated with." Applicants traverse this assertion. However, because the term "mated with" may encompass the term "located within," Applicants have removed the term "located within" from the claim.

The Advisory Action further asserts that claim 203 is indefinite because there is no antecedent basis for "other cells isolated and arrayed within the cell isolation device." Applicants have amended claim 197 and claim 203 to respond to the concern. Claim 197 is

amended to clarify that each receptacle of a plurality of magnetic receptacles may contain immobilized cells and each receptacle is situated in a location discrete from other magnetic receptacles that also may contain immobilized cells. Claim 203 has been amended to clarify that the mated cell isolation device is capable of isolating cells immobilized in one magnetic receptacle from cells immobilized in other magnetic receptacles. Antecedent basis, therefore, is found in claim 197 in cells immobilized in one of a plurality of magnetic receptacles that are discretely located from other of a plurality of cells. Further, claim 203 clearly claims that cells immobilized in one of the plurality of magnetic receptacles are isolated by the cell isolation device from cells immobilized in other of the plurality of magnetic receptacles when arrayed within the cell isolation device.

The Advisory Action asserts that claim 208 is indefinite because it is “unclear as to the relationship of the immobilized cells associated with magnetic material to the cells and beads required by claim 197.” Applicants have amended claim 197 to refer to “magnetic material” rather than “magnetic beads.” As such, it is clear that “cells associated with said magnetic material” in claim 208 are antecedeted by the “magnetic material” in claim 197.

The Advisory Action also asserts that claim 208 is indefinite because it is “unclear how cells being transferred from the receptacle to the cell isolation device by centrifugal force defines structure of the device claimed.” Applicants have amended claim 208 (and claim 203) to clarify the structure of the device. As amended, the device is structured so that the substrate is mated to the cell isolation device such that the plurality of magnetic receptacles immobilizing said cells comprises a matching periodicity with the cell isolation device and when subject to centrifugal force is capable of transferring a substantial number of the immobilized cells from the magnetic receptacles to the matching periodicity of the corresponding cell isolation device. *See* Appln. at page 32, lines 20-25. Matching periodicity provides the structure necessary for transferring a substantial number of the immobilized cells from the magnetic receptacles to the corresponding cell isolation device. As such, the structure of the claim should be clear.

## CONCLUSION

Applicants submit that the foregoing amendments respond to the concerns raised in the Advisory Action of February 14, 2006 and that the claims are in condition for allowance.

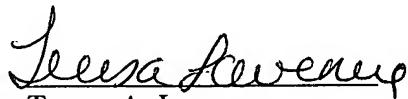
Applicants authorize the Commissioner to charge any fee due or credit any overpayment arising from this communication to Kenyon & Kenyon LLP **Deposit Account No. 11-0600**.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

KENYON & KENYON LLP

Dated: 4/27/06



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Library of Congress Cataloging in Publication Data  
Main entry under title:

The Merriam-Webster dictionary.

p. cm.

ISBN 0-87779-606-8 (alk. paper)

1. English language — Dictionaries. I. Merriam-Webster Inc.  
PE1628.M353 1998  
423—dc21

97-39927  
CIP

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Made in the United States of America

2425RRD0302

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### **discordant • dish**

y or as  
bility

try, or  
ed  
fallacy.

damage  
able, in-  
ICAP —  
in\ adj  
resources  
ual posi-  
ection or  
: to differ  
ess (fried

isfort: UN-  
EEVISH —  
stle\ adv  
nit or rec-  
vance n  
sight 2 : to  
vance n  
fill the ex-  
ent n  
DISAPPROV-  
se judgment

to feel or ex-  
EJECT  
weapons from  
armed forces  
aceable, or  
sar-ma-ment

the arrange-  
t n  
SION 2 : disor-

take apart  
to detach from

desastre, fr. It  
1 : a sudden or  
as-tras\ adj

responsibility for  
l\ n  
the organization

the legal profes-

old not worthy of  
reject belief —  
" n  
of a burden

disbursing 1 : to  
— disburse-ment

1 : to let go a play-  
play (a card) from  
erent from the one  
— discard \dis-

es by the friction of  
ie sides of a rotating

detect with the eyes  
to come to know

or recognize mentally — discern-  
ernment

discerning adj : revealing insight and understanding

discharge \dis-\chärj, "dis-\chärj\ vb 1 : to relieve of  
a charge, load, or burden : UNLOAD; esp : to remove  
the electrical energy from (~ a storage battery) 2 : to  
let or put off (~ passengers) 3 : SHOOT (~ an arrow)  
4 : to set free (~ a prisoner) 5 : to dismiss from ser-  
vice or employment (~ a soldier) 6 : to get rid of by  
paying or doing (~ a debt) 7 : to give forth fluid (as  
river ~s into the ocean)

discharge \dis-\chärj, dis-\chärj\ n 1 : the act of dis-  
charging, unloading, or releasing 2 : something that  
discharges; esp : a certification of release or payment  
3 : a firing off (as of a gun) 4 : a flowing out (as of  
blood from a wound); also : something that is emitted  
(a purulent ~) 5 : release or dismissal esp. from an  
office or employment; also : complete separation  
from military service 6 : a flow of electricity (as  
through a gas)

disciple \di-\sé-pál\ n 1 : one who accepts and helps  
to spread the teachings of another; also : a convinced  
adherent 2 cap : a member of the Disciples of Christ

disciplinarian \di-sé-plá-nér-é-an\ n : one who en-  
forces order

disciplinary \di-sé-plá-nér-é\ adj : of or relating to  
discipline; also : CORRECTIVE (take ~ action)

discipline \di-sé-plán\ n 1 : PUNISHMENT 2 : a field of  
study : SUBJECT 3 : training that corrects, molds, or  
perfects 4 : control gained by obedience or training  
: orderly conduct 5 : a system of rules governing con-  
duct

discipline vb -plined; -plining 1 : PUNISH 2 : to train  
or develop by instruction and exercise esp. in self-  
control 3 : to bring under control (~ troops); also : to  
impose order upon

disc jockey n : an announcer of a radio show of pop-  
ular recorded music

disclaim \dis-\klám\ vb : DENY, DISAVOW — dis-  
claimer n

disclose \dis-\kloz\ vb : to expose to view — dis-  
closure \klo-zhér\ n

disco \dis-kó\ n, pl discos 1 : a nightclub for dancing  
to live or recorded music 2 : popular dance music  
characterized by hypnotic rhythm, repetitive lyrics,  
and electronically produced sounds

discolor \dis-\ká-lar\ vb : to alter or change in hue  
color esp. for the worse — discoloration \ká-lá-  
rā-shén\ n

discombobulate \dis-kém-\bá-byú-\lát\ vb  
ed; -lat-ing : UPSET, CONFUSE

discomfit \dis-\kám-fít, esp Southern \dis-kám-  
fít\ vb : UPSET, FRUSTRATE — discomfiture \dis-\kám-  
fúr\ n

discomfort \dis-\kám-fart\ vb : to make uncom-  
able or uneasy

discomfort n : mental or physical uneasiness

discomode \dis-ká-\mód\ vb -mod-ed; -mod-  
ing : INCONVENIENCE, TROUBLE

discompose \kám-\póz\ vb 1 : AGITATE 2 : DIS-  
RANGE — discompose-ure \pó-zhár\ n

disconcert \dis-kán-\sárt\ vb : CONFUSE, UPSET

disconnect \dis-ká-\nek\ vb : to undo the connec-  
tion of — disconnection \nék-shén\ n

disconnected adj : not connected; also : INCON-  
NECTED

disconsolate \dis-\kán-sa-\lát\ adj 1 : CHEERLESS  
: hopelessly sad — disconsolate-ly adv

discontent \dis-kán-\ént\ n : uneasiness or  
DISSATISFACTION — discontented adj

discontinue \dis-kán-\tin-yü\ vb 1 : to break  
continuity of; cease to operate, use, or take  
— discontinuation \yó-wéns\ n — discon-  
tinuity \dis-\kán-ta-\yú-\é-té, "yú-\n\ n — discon-  
tinuous \dis-kán-\tin-yá-wás\ adj

discord \dis-\kórd\ n 1 : lack of agreement or

**ny** : DISSENTION, CONFLICT 2 : a harsh combination of musical sounds 3 : a harsh or unpleasant sound — **dis-cord-ant** \dis-<sup>kōrd-</sup>ānt\ adj — **dis-cordantly** adv  
**disco-theque** \dis-kō-tek\ n : DISCO 1  
**discount** \dis-<sup>koun</sup>t\ n 1 : a reduction made from a regular or list price 2 : a deduction of interest in advance when lending money  
**discount** \dis-<sup>koun</sup>t, dis-<sup>kōunt</sup>\ vb 1 : to deduct from the amount of a bill, debt, or charge usu. for cash or prompt payment; also : to sell or offer for sale at a discount 2 : to lend money after deducting the discount (~ a note) 3 : DISREGARD; also : MINIMIZE 4 : to make allowance for bias or exaggeration 5 : to take into account (as a future event) in present calculations — **discountable** adj — **discount-er** n  
**discount** \dis-<sup>koun</sup>t, adj : selling goods or services at a discount; also : sold at or reflecting a discount  
**discon-tin-u-ance** \dis-<sup>koun</sup>-tē-n-ans\ vb 1 : EM-BARASS, DISCONCERT 2 : to look with disfavor on  
**discon-tem-pn** \dis-<sup>koun</sup>-tēm-pn\ vb -aged; -aging 1 : to deprive of courage or confidence : DISHEARTEN 2 : to humiliate by disfavoring 3 : to attempt to dissuade — **discour-age-ment** n — **discour-aging-ly** adv  
**discur-sive** \dis-<sup>kōrs</sup>\ n [ME *discours*, fr. ML & LL *discursus*; ML, argument, fr. LL, conversation, fr. the act of running about, fr. *discurrere* to run about, *curare* to run] 1 : CONVERSATION 2 : formal and usually extended expression of thought on a subject  
**discurse** \dis-<sup>kōrs</sup>\ vb dis-coured; dis-coursing 1 : to express oneself in esp. oral discourse 2 : TALK, CONVERSE  
**dis-cour-teous** \dis-<sup>kōr-tē-əs</sup>\ adj : lacking courtesy, civility, or respect — **dis-cour-teously** adv  
**dis-courtesy** \dis-<sup>kōr-tē-sē</sup>\ n : RUDENESS; also : a rude act or manner  
**discover** \dis-<sup>kō-vər</sup>\ vb 1 : to make known or visible 2 : to obtain sight or knowledge of for the first time; also : FIND OUT — **dis-cover-er** n  
**discovery** \dis-<sup>kō-və-rē</sup>, n, pl -eries 1 : the act or process of discovering 2 : something discovered 3 : the disclosure usu. before a civil trial of pertinent facts or documents  
**dis-cre-dit** \dis-<sup>kōr-dēt</sup>\ vb 1 : DISBELIEVE 2 : to cause disbelief in the accuracy or authority of 3 : DISGRACE — **dis-cre-dit-able** adj  
**dis-cred-it** 1 : loss of reputation 2 : lack or loss of belief or confidence  
**dis-creet** \dis-<sup>kōr-t</sup>\ adj : showing good judgment; esp : capable of observing prudent silence — **discreet-ly** adv  
**discrep-ancy** \dis-<sup>kōr-pən-sē</sup>, n, pl -cies 1 : DIFFERENCE, DISAGREEMENT 2 : an instance of being discrepant, at variance  
**discrep-ant** \dis-<sup>kōr-pənt</sup>\ adj [ME *discrepaunt*, fr. L *discrepans*, pp. of *discrepare* to sound discordantly; fr. *dis-* + *crepere* to rattle, creak] : being at variance : DISCREPANT, AT VARIANCE  
**dis-crete** \dis-<sup>kōr-t</sup>\ adj 1 : individually distinct, noncontinuous  
**dis-crep-ency** \dis-<sup>kōr-pən-sē</sup>, n 1 : the quality of being PRUDENCE 2 : individual choice or judgment 3 : free decision or latitude of choice — **dis-crep-ent** adj  
**dis-dic-tate** \dis-<sup>kōr-mə-nāt</sup>\ vb -nated; -nat-ed  
**dis-dic-tion** \dis-<sup>kōr-mə-nāshən</sup>\ n 1 : DIFFERENTIATE 2 : to make a difference on a basis other than individual discrimination \dis-<sup>kōr-mə-nāshən</sup>\ n : marking by discrimination; esp. JUDGMENT, JUDICIOUS  
**dis-dic-tor** \dis-<sup>kōr-mə-nā-tōr</sup>\ adj : marked by discrimination (~ treatment)  
**dis-<sup>kōr-miv</sup>** \dis-<sup>kōr-miv</sup>\ adj : passing from one topic to another — **rambling** — **dis-cursive-ly** adv — dis-